



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MTI/171297

PRELIMINARY RECITALS

Pursuant to a petition filed January 08, 2016, under Wis. Stat. § 49.85(4), and Wis. Stat. § 227.42, to review a decision by the Public Assistance Collection Unit in regard to Medical Assistance, a hearing was held on February 09, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether the Petitioner's appeal is timely and, if so, whether the agency properly issued a tax intercept notice for an unpaid public assistance debt.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

;

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED]
Public Assistance Collection Unit
PO Box 8938
Madison, WI 53708-8938

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On May 28, 2013, the Petitioner submitted an application to the agency for FS and MA benefits. She reported that she and her three children (two adults, one minor) were homeless. She reported no income for the household. She reported she was not receiving benefits from any other state.

3. On May 29, 2013, the agency issued a Notice of Decision to the Petitioner to her agency mailbox. It informed her that her application was approved for FS and for BadgerCare Plus for herself and her minor son effective May 1, 2013.
4. On June 7, 2013, the Petitioner contacted the agency to report a new mailing address.
5. On December 6, 2013, the agency became aware that the Petitioner had been receiving MA and FoodShare benefits from the State of Virginia for herself and two children since February, 2013. The agency further received information that the Petitioner added two additional household members receiving benefits from Virginia for the period of April, 2013 – July 31, 2013. According to information provided by the State of Virginia, the Petitioner reported her address on [REDACTED] in [REDACTED], Virginia for the period of February – December, 2013.
6. On December 10, 2013, Wisconsin Medicaid and Badgercare Plus Overpayment Notices and worksheets were issued to the Petitioner at her address on [REDACTED] in [REDACTED], Virginia informing her that the agency intends to recover total overissuances of MA benefits in the amount of \$2,178.81 for the period of May 1, 2013 – December 31, 2013. The notices also informed the Petitioner of the right to appeal by requesting a hearing with the Division of Hearings and Appeals within 45 days of the date of the letter. The notices were not returned as undeliverable.
7. On January 3, 2014, the agency issued a Notice and Repayment Agreement for Medical Assistance/Badgercare/Badgercare Plus Overpayment to the Petitioner at the address on [REDACTED] [REDACTED] [REDACTED]. This notice informed her that the agency intends to recover an overpayment of benefits in the amount of \$2,178.81. It also informed her of the right to request a hearing by filing an appeal with the Division of Hearings and Appeals within 45 days of the date of the notice.
8. Dunning notices were issued to the Petitioner at her [REDACTED] address on February 4, 2014 and March 4, 2014. The notices were not returned as undeliverable.
9. On March 21, 2014, the Petitioner submitted an application for MA benefits to the Wisconsin MA agency. She reported that she was homeless. She reported a household size of two including herself and one minor child.
10. On March 25, 2014, the Petitioner contacted the agency. She reported she moved to Wisconsin from Virginia on March 15, 2014 and she reported she is homeless.
11. On April 2, 2014, the agency issued a dunning notice to the Petitioner's mailbox at the agency.
12. On April 8, 2014, the Petitioner contacted the agency to report a change in address to [REDACTED], Milwaukee.
13. On December 2, 2014, the State of Wisconsin filed a lien judgment against the Petitioner for the overpayments.
14. On February 13, 2015, the agency issued a tax intercept notice to the Petitioner's last reported address on [REDACTED], Milwaukee. The notice informed the Petitioner of the right to appeal by filing a request for a hearing within 30 days of the date of the notice. The notice was not returned to the agency as undeliverable.
15. On January 8, 2016, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

A hearing officer can only rule on the merits of a case if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action by a county agency concerning MA, including an action to recover an overissuance of MA benefits, must be filed within 45

days of the date of the action. Wisconsin Stat. § 49.45(5); Income Maintenance Manual § 3.3.1. An appeal of a tax intercept action must be filed within 30 days of the date of the notice. Wis. Stat., § 49.85.

In this case, the Petitioner testified that she never received any notices relating to the overpayment or the tax intercept. The evidence establishes that the agency properly issued the notices to the last-reported addresses of the Petitioner. The notices were not returned to the agency as undeliverable. The presumption is that the notices were delivered to the Petitioner in a timely manner. The Petitioner did not present any evidence to establish that she was not living at the addresses to which the notices were sent or that any reason exists for her not to have received the notices. Therefore, I conclude that her appeal is not timely as to the overpayment action or the tax intercept action and I have no authority to rule on the merits of the agency's actions.

CONCLUSIONS OF LAW

The Petitioner's appeal is untimely.

THEREFORE, it is

ORDERED

That the Petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 3rd day of May, 2016

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on May 3, 2016.

Public Assistance Collection Unit
Public Assistance Collection Unit
Division of Health Care Access and Accountability